IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 246 OF 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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RANJITSINGH GAJESINGH OSWAL & ORS. - Petitioner(s)

Versus

DEPUTY SECRETARY & ORS. - Respondent(s)

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Appearance :
Shri Prakash K. Jani for Petitioner(s) : 1 - 3.
Shri Dipen Desai, Assistant Government Pleader for Respondent No.1.
None for Respondent Nos.2 - 4.
Shri Muktesh V. Patel for Respondent No. 5.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/06/2007

ORAL JUDGMENT

1. From the Court proceedings, it appears that on 21st March,

1997, this Court directed respondent No.2, Taluka Development Officer, to remain in attendance along with the relevant record.

On 31st March, 1997, the Court recorded that Mr. R. A. Sonara, the then Taluka Development Officer, had already retired. The Court directed to issue notice to him. Thereafter, Mr. R.A. Sonara appeared in the Court on 11th April, 1997 and had also filed his affidavit on 28th November, 1997.

2. The short facts necessary for disposal of the present Writ Application are that respondent No.4, Parshottambhai, Bhagabhai Patel, made an application to the Taluka Development Officer for conversion of the land use from agricultural to non-agricultural. The matter was considered by the Taluka Panchayat and thereafter, the Executive Committee of Taluka Panchayat, in its meeting dated 13th March, 1989, resolved to grant the permission. The matter was referred to the Taluka Development Officer, who, in accordance with the resolution, granted the permission. After obtaining the permission, respondent No.4, Parshottambhai Bhagabhai Patel, earmarked certain plots in the said land and the petitioners purchased one plot each. After obtaining the legal permission from the Taluka Panchayat, they had constructed and developed a house. It appears that the permission dated 15th March, 1989 granted by the Taluka Development Officer was taken in *suo motu*

revision by the learned Deputy Collector on 23rd July, 1992. The petitioners appeared before the said Deputy Collector and submitted their reply, but, the learned Deputy Collector *vide* his order dated 26th February, 1993, set aside the permission granted by the Taluka Development Officer. Parshottambhai Bhagabhai Patel, the original land holder/owner, filed Revision Application No. SRD/BKHP/MSN/27/95. However, the said revision came to be dismissed on 22nd July, 1996. Being aggrieved by the said order, the petitioners are before this Court.

3. The learned Secretary (Appeals), in his order, has observed that the learned Deputy Collector had no jurisdiction or authority to take up the order passed by the Taluka Development Officer in *suo motu* revision, but, however, he held that such authority vests in the learned Secretary (Appeals). Therefore, the permission granted by the Taluka Development Officer could be cancelled. Accordingly, the learned Secretary (Appeals) dismissed the revision and maintained the order passed by the learned Deputy Collector.

4. Present is a case where the learned Deputy Collector initiated the proceedings after assuming *suo motu* revisional powers. Once the proceedings were started by the learned Deputy Collector, then, the appellate or revisional authorities would step in the shoes of the original authority and they can exercise only those powers, which the

first authority could exercise. In the present case, if the learned Deputy Collector had no jurisdiction to exercise *suo motu* revisional powers or set aside the order passed by the Taluka Development Officer, then, the Appellate Authority or the Revisional Authority, in the collateral proceedings, could not incidentally exercise the revisional powers nor could they say that the first authority had no jurisdiction, but, they themselves would exercise the revisional powers.

5. Once it is held that the first authority had no jurisdiction, then, the defect of jurisdiction cannot be cured by any appellate or revisional authority by exercising its revisional powers. If in a case where the assumption of jurisdiction is totally bad and the order is without jurisdiction, then, the order is required to be set aside and no other authority in the very same proceedings can say that they would exercise their powers.

6. In view of the findings recorded by the learned Secretary (Appeals) that the learned Deputy Collector had no jurisdiction to exercise the *suo motu* powers, the learned Secretary (Appeals) was obliged to allow the revision and quash all the proceedings. If the learned Secretary (Appeals) wanted to exercise his *suo motu* revisional powers, then, he was required and obliged to register a separate case and issue fresh notices to the petitioners.

7. In view of the findings recorded by the learned Secretary (Appeals), I must hold that the learned Deputy Collector had no jurisdiction to exercise *suo motu* revisional powers and the order passed by the said Deputy Collector is bad, it deserves to and is, accordingly, quashed. Consequently, the order dated 22nd July, 1999 passed by the learned Secretary (Appeals) is also quashed.

8. Accordingly, petition is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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